

IN FACT FINDING PROCEEDINGS PURSUANT TO CALIFORNIA  
GOVERNMENT CODE SECTION 3592

CALIFORNIA NURSES ASSOCIATION,	]	
	]	RECOMMENDATIONS
	]	
Union,	]	of
and	]	
	]	FACT FINDING PANEL
	]	
UNIVERSITY OF CALIFORNIA,	]	John Kagel, Neutral Chair
	]	Joe Lindsay, Union
Employer.	]	Howard Pripas, Employer
	]	
	]	
Re: 2009 Reopener	]	

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APPEARANCES:

For the Union: Beth Kean, CNA, Oakland, CA

For the Employer: Gayle Saxton, Oakland, CA

INTRODUCTION:

The Parties presented four days of evidence and a further day of final argument on reopeners on staffing, Association rights, benefits and wages involving five independent Medical Centers and six campus and laboratory sites for a Bargaining Unit of over 10,000 Nurses.

The Panel has deliberated on several occasions and had determined to proceed as follows:

Except as otherwise indicated, the recommendations herein are those of the Neutral Chair. If a provision or proposal is not mentioned in this report, the recommendation of the panel is to retain the language in the respective section, reopened pursuant to the current 2008-2010 Collective Bargaining Agreement, except

where the Parties have otherwise reached agreement. As to some proposals, as noted below, the Union and Employer Panel members have agreed to provide direction to the parties as to the potential solution(s). The Panel has further agreed that summary statements as to each recommendation is appropriate for this report.

The evidence, which included comparisons to nurses in Union-represented and non-represented hospitals throughout California, the testimony of witnesses for both Parties as to comparisons and matters that were internal to the Medical Centers and other materials, was carefully considered. The overriding purpose of these recommendations is, after consideration of the record of the proceedings and that evidence proffered by both Parties, is to not necessarily reflect the personal preferences of the Chair. Rather, the recommendations are made for the Parties' consideration as to what it is likely that their Agreement could be—if not as desired by each Party at least acceptable to them for the recommendations have sought to take into account the institutional benefits that both Parties have indicated they respectively need and desire from their Agreement.

#### ARTICLE 8, STAFFING:

##### BRN Advisory:

The Union seeks incorporation of a BRN advisory about floating to a new position or patient care unit. This is not recommended given that such advisories, among other things, can be changed during the life of the Agreement, are not fully clear and are not a statement of law and regulation themselves. Article 8, Section A requires that staffing is to be in accord with applicable regulation, not a recapitulation of the law as is the advisory. To the extent the Union feels that the BRN advisory provides guidance to its Bargaining Unit it can freely advise them of it.

##### Floating:

The Union seeks through an example that a medical-surgical nurse without specific telemetry competency floated to a telemetry unit shall not be given a primary

patient assignment to a telemetry patient although the nurse can be given limited nursing care duties. In addition to pointing out that not all patients who are assigned to a bed in a telemetry unit may not be a telemetry patient, the University has proposed that if Nurses feel they lack clinical competency, including age-specific clinical competency, in addition to informing the immediate nursing supervisor may also immediately pursue their concerns which they feel have not been adequately addressed through the nursing management structure. They can seek Union representation should they so desire.

Given the recognition that limited patient care assignments are authorized which take into account a Nurse's specific competencies and the immediate authority to dispute a supervisor's decision concerning assignments the University's proposal with this addition is recommended to provide experience as to whether it resolves floating assignment issues.

A Union proposal to limit mandatory floating assignments to Nurses with less than five years' seniority is not recommended given lack of comparable provisions in other agreements and the restrictive aspects of the proposal.

A Union proposal to deny floating between hospital locations maintained by the same medical center is also not recommended given the limited situations shown in earlier negotiations when such floating has been mandated and no further information has been provided in this round. For similar reasons a sought-for float differential is not recommended.

The University, as noted, agrees with a Union proposal that age-specific competencies are required to float where applicable.

The current Agreement provides for meeting and conferring as defined therein regarding units to which Nurses are required to float. The Union seeks that, in effect, there be binding interest arbitration in the event that no agreement concerning floating clusters can be achieved. The University opposes binding arbitration and seeks a change

in wording to reflect what the provision requires. That issue is dealt with below with respect to facility conferences on floating and meals and breaks.

A Union proposal to mandate Traveler and Registry Nurses floating before any Bargaining Unit Nurse, eliminating an exception unless it is not practicable to do so, called attention to a practice at one facility. The University has represented that that practice will be corrected and has submitted a modified proposal to that effect which is recommended.

Break and Meal Relief:

In another staffing provision the Union has proposed specific ratios concerning relief Nurses to provide break and meal relief.

What the record showed was that the issues of floating and adequate relief staffing has been brought forward at each Medical Center and that relief staffing has been settled at UCLA Westwood and talks are underway at UCLA Santa Monica and at least to some degree at Davis. Such talks are also opened at San Diego and San Francisco. The record also showed that each facility and units within them are run differently from each other in accordance with their needs and customs.

The result to the Panel is that these differences as to both floating and staffing are local to each facility, that they can be addressed there and that if the PPC and Nursing Management are proactive the issues can be resolved as each facility needs. Such discussions have been initiated. The Panel also recommends, however, that in the event they are not so resolved by June 15, 2009 that any specific issues at each location remaining be brought before the Panel for specific recommendations as to how they should be resolved.

The Union seeks "adequate time" for reports from Nurses going on breaks and meals to be made when they leave and when they return. The record showed that the time involved in such reports could vary depending on the circumstances. Reports are to be given during work time.

#### Charge Nurses:

A Union proposal that Charge Nurses are not to have prior patient care assignments and not be used for more than two break and lunch relief stints per 12-hour shift. Again, given the wide variety of staffing methods, to place specific limits in this respect is for the relief decisions at each facility to be reached by the Union and Management provided that Charge Nurses have sufficient time to carry out the duties specific to that position.

### ARTICLE 15: BENEFITS

#### Medical Benefits:

With respect to medical benefits, there is no dispute as to the medical benefits offered for 2009. The following language of the University is recommended to resolve future medical benefit issues:

“Using the percent increase of gross premiums for the statewide HMO (Health Net in 2008), the University increases the Employer Contributions for this HMO in each coverage category (U, UC, UA, UAC) in each pay band. The employer contributions in the corresponding coverage categories for the remaining statewide medical plans (in 2008 they are: Anthem Blue Cross, Anthem Blue Cross PPO, and CIGNA Choice Fund) are set to these same dollar amounts”

provided that the University agrees that there will be no substantial changes in benefits made because of its specifications to health care provider organizations. Similarly, the University’s proposal for plans not offered at all locations, currently Kaiser and WHA should be adopted.

#### Retirement Contributions:

With respect to retirement, this is the most contentious issue in the current negotiations. The background is that for the past 19 years the University Pension Plan has not required contributions from either the University nor its employees. When such contributions ceased a two percent contribution by employees was “redirected” to

individual retirement savings accounts. With actuarial requirements requiring funding to resume for the University Plan the Employer has proposed that employees "redirect" their two percent contribution from their individual accounts to the University Plan with the University contributing a like amount.

The difficulty, among others, is that the University has not committed as to what its contribution may be beyond two percent. The Union has called attention to the history of Employer contributions compared to employee contributions prior to the moratorium on contributions to the University Plan. (Jt. Ex. 4) That history from 1976 to 1993 had employee contributions ranging from 3 percent under the Social Security wage based to two percent and in one instance 1.7 percent. University contributions ranged from 8.06 to 14.97 percent until 1989 when it was 5.92 percent and then 4.03 percent in 1990 before contributions were no longer required.

The Union's objection to the University's proposal for a 2% employee contribution acknowledges that a redirection from the individual accounts to the University Plan would not take money out of an employee's pocket but would leave that contribution out of the individual account. The Union is concerned both that a one-to-one match as the University proposes is far out of line with the ratio of University had contributions in the 1976 to 1990 period. Of equal concern to it is that the University has made no commitment to contributions beyond two percent which is contrary to its actuaries' proposals and leaves any future projections for contributions uncertain.

While the University has a position that its contribution rate is beyond the scope of the fact finding process that position is not addressed here. The University considers that its two percent contribution is sufficient because it is a floor on contributions, and it believes the Panel should recommend a restart of contributions on July 1, 2009 by employees at the level of the redirection proposed. But what is apparent is that without knowledge of what the University's intended contribution for July 2009 will be, and it is unlikely that that decision will be made before January 2009 according to the testimony, this issue cannot be resolved until that decision is made.

The recommendation to deal with that issue is to move up the date of the October 1, 2009 reopener to July 1, 2009. The reason for the October date was because by then, typically, health benefit rates would be known. With resolution of the future health benefit formula recommended above, and given that there will be a reopener in any event, moving up the date of the reopener will give the Parties an opportunity to deal with the retirement issue when greater certainty is known. The University considers this recommendation not as optimal as its proposal; it acknowledges that in lieu of Union agreement to its proposal the above recommendation could be acceptable.

If agreed to the July 1, 2009 reopener should include the same schedule for negotiations and fact finding as the current reopener.

The Union contends that a change in the default from a money market to stock in the retirement plan should be reversed. Whether the University's position is that that is a proper fiduciary decision holds up under current financial markets' conditions remains to be seen. But if the change is to be made with ample publicity there is no recommendation to change it.

#### Side Letters:

Side letters on pension and retiree health are recommended to be extended to June 30, 2009. A side letter to include the wording of Article 15.F should be agreed to.

#### ARTICLE 29: ASSOCIATION RIGHTS

The University's proposals to rescind certain benefits agreed to in March of this year are premature, if they are considered to have merit, given how recently the proposals were adopted. However, the Parties recognize that the new provision in Article 29.D.2.a.7 appears to be redundant to Article 29.D.2.a.5 and with that understanding can be rescinded without requiring a change to the status quo.

## ARTICLE 40: WAGES

With respect to wages the Union relies on Union-represented hospitals where collective bargaining agreements are available to check comparisons.

The University asserts that the information contained in the HASC surveys is reliable, and represents information obtained both from union and non-union hospitals and follows standard methodology utilized by compensational professionals. The University disagrees that the validity of the data is questionable. Moreover, the University asserts that the summary of this information is a superior basis on which the panel should be basing its recommendation with respect to wages at each of the respective locations because it represents a full array of local hospitals. While there is no way to independently verify the underlying information in the HASC surveys. The Union asserts there is no way to verify the underlying information in the HASC surveys. The University asserts that each member, for its own purposes, would have motivation to be truthful and/or complete, but there is no way to fully check that assertion for each hospital while the Union agreements are verifiable from their contents. In addition, the UC facilities are unionized and comparisons with their peers in this respect are valid. And the Union has presented evidence on this point based on proposals by it and the University at each facility including showing where they fall with respect to each year of a Nurse's longevity.

Nonetheless, particular elements in wage recommendation necessarily include whether wages paid keep pace with the cost of living and impact on the ability of the Employer to recruit and retain Nurses. Notably, several of the UC facilities, which maintain their own budgets and do not share revenues with each other, have offered to increase wages..

A principal issue at Irvine is that the increases in most longevity steps lag behind the universal two percent increases between them at all other Medical Centers; the University has proposed that that gap be closed in 2008-2009.

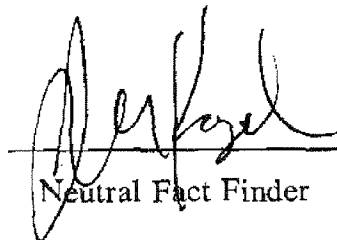


While there are different "market" conditions for the services of CN II Nurses, the benchmark classification, at each Center this market is constantly moving upwards over time. The record indicates that the current range of such movement appears to be is between four and five percent through July 2009 with the exception of Davis where the University has proposed a seven percent increase and which the Union accepts. Accordingly it is recommended that at the medical Centers other than Davis there should be two percent increases for CN II's in November 2008 and 2.5 percent increases in May 2009 to be allocated to each Medical Center CN II wage schedule. In addition consideration should be given to moving experience step movement to an effective date earlier than July 2009 to offset the changed recommended dates of the across-the-board increases referenced above or to potentially applying such savings to other compensation items. The allocations for separate classifications and for Student Health Centers have traditionally been agreed-to by the Parties and is left to them to do this year.

The Union has also sought an increase in on-call pay, night shift differential as well as pay for Preceptors and some added longevity increments. Preceptor proposals should be considered, if the Parties wish, in July 2009.

With respect to on-call pay, with the exception of San Diego where the University has proposed an increase, and night shift differential at UCLA and Davis where the University has proposed increases, and longevity increments no other recommendations are made at this time.

Respectfully submitted,



Neutral Fact Finder

October 22, 2008